

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

May 11, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CLARENCE BRAXTON,

Petitioner,

v.

STATES OF WASHINGTON,

Respondent.

NO: 2:20-CV-49-RMP

ORDER SUMMARILY DISMISSING  
HABEAS PETITION

Petitioner Clarence Braxton, a prisoner currently housed at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid.

**PROPER RESPONDENT**

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the

ORDER SUMMARILY DISMISSING HABEAS PETITION -- 1

1 petitioner is incarcerated, the proper respondent is generally the warden of the  
2 institution where the petitioner is incarcerated. *Padilla*, 542 U.S. at 436. Failure to  
3 name a proper respondent deprives federal courts of personal jurisdiction. *See*  
4 *Stanley*, 21 F.3d at 360.

## 5 EXHAUSTION REQUIREMENT

6 Petitioner challenges an unspecified Spokane County guilty plea. He invites  
7 the Court to “see case file” but provides no case file. ECF No. 1 at 2. Petitioner  
8 does not identify his conviction or his sentence. He indicates that he pursued a  
9 direct appeal but did not file a petition for certiorari in the United States Supreme  
10 Court. *Id.* 1 at 2–3. In his grounds for relief, Petitioner argues that the State of  
11 Washington has no jurisdiction to decide federal constitutional matters. *Id.* at  
12 4–12. It has long been settled that state courts are competent to decide questions  
13 arising under the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898)  
14 (“It is the duty of the state court, as much as it is that of the federal courts, when  
15 the question of the validity of a state statute is necessarily involved, as being in  
16 alleged violation of any provision of the federal constitution, to decide that  
17 question, and to hold the law void if it violate that instrument.”); *see also*  
18 *Worldwide Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding  
19 that state courts are as competent as federal courts to decide federal constitutional  
20 matters). Therefore, Petitioner’s arguments to the contrary lack merit.

1        Additionally, before a federal court may grant habeas relief to a state  
2 prisoner, the prisoner must exhaust the state court remedies available to him. 28  
3 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally  
4 requires that a prisoner give the state courts an opportunity to act on his claims  
5 before he presents those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S.  
6 838 (1999). A petitioner has not exhausted a claim for relief so long as the  
7 petitioner has a right under state law to raise the claim by available procedure.  
8 *See Id.*; 28 U.S.C. § 2254(c).

9        To meet the exhaustion requirement, the petitioner must have “fairly  
10 present[ed] his claim in each appropriate state court (including a state supreme  
11 court with powers of discretionary review), thereby alerting that court to the  
12 federal nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*,  
13 513 U.S. 364, 365–66 (1995). A petitioner fairly presents a claim to the state court  
14 by describing the factual or legal bases for that claim and by alerting the state court  
15 “to the fact that the ... [petitioner is] asserting claims under the United States  
16 Constitution.” *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249  
17 F.3d 895, 898 (9th Cir. 2001) (same). Mere similarity between a claim raised in  
18 state court and a claim in a federal habeas petition is insufficient. *Duncan*, 513  
19 U.S. at 365–66.

20        Furthermore, to fairly present a claim, the petitioner “must give the state  
21 courts one full opportunity to resolve any constitutional issues by invoking one

1 complete round of the State's established appellate review process.” *O’Sullivan*,  
2 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,  
3 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275  
4 (1971). It does not appear from the face of the Petition that Petitioner has  
5 exhausted his state court remedies as to each of his grounds for relief.

## 6 **GROUND FOR FEDERAL HABEAS RELIEF**

7 Petitioner asserts that the Washington state constitution contradicts the  
8 federal constitution regarding the Fifth Amendment right to “presentment or  
9 indictment of a Grand Jury.” He claims “no bill of indictment” was brought  
10 against him rendering his arrest, conviction and imprisonment illegal.

11 Petitioner seems to argue that because the state courts have defied “federally  
12 established procedures and processes for the adjudication of crimes” only “a court  
13 of federal jurisdiction” has jurisdictional authority over his claims. His bald  
14 assertion that “due process of the law was ignored” is unsupported by his factual  
15 allegations.

16 The United States Supreme Court stated long ago: “Prosecution by  
17 information instead of by indictment is provided for by the laws of Washington.  
18 This is not a violation of the Federal Constitution.” *See Gaines v. State of*  
19 *Washington*, 277 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the  
20 contrary presented in his four grounds for federal habeas relief are legally  
21 frivolous.

1 Because it plainly appears from the petition and the attached exhibits that  
2 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** that the petition,  
3 ECF No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254  
4 Cases in the United States District Courts. All pending motions are **DENIED as**  
5 **moot.**

6 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
7 enter judgment, provide copies to Petitioner, and **close the file**. The Court certifies  
8 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be  
9 taken in good faith, and there is no basis upon which to issue a certificate of  
10 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of  
11 appealability is, therefore, **DENIED.**

12 **DATED** May 11, 2020.

13  
14 *s/ Rosanna Malouf Peterson*  
15 ROSANNA MALOUF PETERSON  
16 United States District Judge  
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